THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24518 OF 2005

% 26-04-2007

Pavuluri Satyanarayana

…Petitioner

and

$ Govt.of A.P. rep.by its Secretary,
Department of Roads & Buildings,
Secretariat, Hyderabad & others.

…Respondents

! COUNSEL FOR PETITIONER: Sri Srinivasa Rao Bodduluri

^ COUNSEL FOR RESPONDENTS: G.P.for R& B
& D.Gopalakrishna,

< Gist:

> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24518 OF 2005

Dated 26th April 2007

Between:

Pavuluri Satyanarayana

…Petitioner

and

Govt.of A.P. rep.by its Secretary,
Department of Roads & Buildings,
Secretariat, Hyderabad & others.

…Respondents

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WRIT PETITION No.24518 OF 2005

O R D E R:

The petitioner was awarded leasehold rights, to operate a tollgate near a bridge constructed on Swarnamukhi river, on Puthalpet-Naidupet road. A lease deed was executed, and it was registered on 16.6.2004, in the office of the Sub-Registrar, Tirupati. Stamp duty of Rs.5,81,245/-, and corresponding registration charges, were paid.

As part of the contract, the petitioner deposited a sum of Rs.22,20,000/- as EMD, in the form of bank guarantee. The contract came to an end on 31.3.2006. No claims were made by the respondents, about the performance of the contract, on the part of the petitioner. However, his EMD was not released, on the ground that they received a communication from the Registration Department, to the effect that there was a deficit of some amount, in the payment of stamp duty, on the lease deed. The petitioner challenges the action of the respondents, in not releasing the EMD and in encashing the bank

guarantee.

The 3rd respondent filed a counter affidavit, admitting the factum of granting lease in favour of the petitioner and successful completion, thereof. It is, however, stated that the District Registrar, Tirupati, informed him that a notice under Section 41-A of the Indian Stamp Act (for short "the Act") was issued to the petitioner on 11.11.2005, pointing out the inadequacy of stamp duty on the lease deed, and an order was passed on 17.12.2005, determining the liability of the petitioner. It is stated that the refund of EMD is withheld, on account of the information received from the District Registrar.

Learned counsel for the petitioner submits that his client was not issued any notice, under Section 41-A of the Act, much less, a copy of any order passed therein. He submitted that even otherwise, the Act is a self-contained code, and there is absolutely no justification for the respondents, in withholding the EMD.

Learned Government Pleader for Roads & Buildings submits that though there are no claims of the Department, against the petitioner, the intimation received from the District Registrar cannot be ignored.

The purpose of requiring a contractor, or a lessee, who is awarded the government contract, to deposit EMD, is to ensure that the work entrusted to him is executed properly. The money, equivalent to any deficiency of performance of the work, is to be recovered from the EMD, at the end of the contract. The respondents could have withheld the EMD of the petitioner, either in its entirety, or in part, had they noticed and determined any deficiency, on the part of the petitioner. Admittedly, neither any deficiency, nor any defect, were attributed to the petitioner.

Section 41-A of the Act comes into picture, when an authority conferred with power thereunder, verifies the records of a Registering Authority and finds some deficiency, as to calculation of stamp duty. The person, to whom the document is released, is to be issued a show-cause notice, pointing out the basis for arriving at the conclusion about the deficiency, as to stamp duty. Thereafter, it can entail a detailed enquiry and a reasoned order. The aggrieved party is conferred with the right of appeal. Even where an order under Section 41-A of the Act is passed, strictly in accordance with the provisions of the Act, and the determination has become final, the amount involved in the matter has to be recovered, in the manner provided for under that Act, or at the best, by invoking the provisions of the Revenue Recovery Act. The Act does not confer any power on the authority, under Section 41-A, to attach or appropriate any amount due to the holder of the document, from any other source. Further, the communication relied upon by the respondents, is not referable to any provision. Therefore, there was absolutely no justification for the respondents, in withholding the EMD payable to the petitioner.

The arbitrariness, on the part of the respondents, is evident from the fact that though deficit stamp duty and registration charges are said to be about Rs.4,00,000/-, they withheld the entire amount of Rs.22,20,000/-. There is absolutely no justification for withholding the EMD, once the lease was successfully executed, in accordance with the terms thereof.

Hence, the writ petition is allowed, and the respondents are directed to release the EMD offered by the petitioner, within a period of two weeks, from the date of receipt of a copy of this order. In case, the amount is not paid within that date, they shall be liable to pay interest

at 12% on this amount, from the due date till the date, on which it is paid, apart from their liability to be proceeded against, under other provisions of law. There shall be no order as to costs.

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26th April 2007

Note: L.R.copies be marked.

(B/o)
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